

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

FILED

MAR 13 2017

Clerk, U.S. District Court
District Of Montana
Missoula

BRIAN SPINKS,

Petitioner,

vs.

ATTORNEY GENERAL FOR THE
STATE OF MONTANA,

Respondent.

CV 15-78-GF-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his findings and recommendations in this case on January 6, 2017, recommending denial of Petitioner Brian Spinks's ("Spinks") petition for writ of habeas corpus under 28 U.S.C. § 2254. Spinks failed to timely object to the findings and recommendations, and so waived the right to *de novo* review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error.

McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). The Court adopts Judge Johnston's findings and recommendations in full.

Judge Johnston found, and this Court agrees, that Spinks's petition should be denied for lack of merit. Spinks is not able to overcome the highly deferential

standard AEDPA imposes upon this Court and, thus, deference must be afforded to the state court decisions. In his petition, Spinks is not able to prove that there was a violation of his right to a fair trial and impartial jury, that the restraints and security measures used against Spinks in the underlying matter were excessive, that his trial counsel was ineffective, or that his appellate counsel was ineffective.

Accordingly, IT IS ORDERED that Judge Johnston's findings and recommendations (Doc. 14) are ADOPTED IN FULL. This action is DISMISSED WITH PREJUDICE. The Clerk of Court shall enter by separate document a judgment in favor of Respondent and against Petitioner Spinks. A certificate of appealability is DENIED.

DATED this 13th day of March, 2017.



Dana L. Christensen
United States District Court